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No. 99-5525

Supreme Court, U.S.
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In The
Supreme Court of the United States

CHARLES THOMAS DICKERSON,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF AMICI CURIAE OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., JOINED BY THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., THE NATIONAL SHERIFFS' ASSOCIATION, AND THE VIRGINIA ASSOCIATION OF CHIEFS OF POLICE IN SUPPORT OF NEITHER PARTY.

(List of Counsel on Inside Front Cover)

2080

Of Counsel:

GENE VOEGTLIN, ESQ.
International Association of
Chiefs of Police, Inc.
515 North Washington St.
Alexandria, Virginia 22312

RICHARD WEINTRAUB, ESQ.
National Sheriffs' Association
1450 Duke Street
Alexandria, Virginia 22314

BERNARD J. FARBER, ESQ.
1126 West Wolfram
Chicago, Illinois 60657-4330

DANA SCHRAD, ESQ.
Executive Director
Virginia Association of
Chiefs of Police
1606 Santa Rosa Road
Suite 134
Richmond, Virginia 23288

Counsel For Amici Curiae:

WAYNE W. SCHMIDT, ESQ.
Executive Director
Americans for Effective
Law Enforcement, Inc.
5519 N. Cumberland Ave.
Suite 1008
Chicago, Illinois 60656
E-mail: AELE@aol.com

JAMES P. MANAK, ESQ.
Counsel of Record
421 Ridgewood Avenue
Suite 100
Glen Ellyn, Illinois 60137
Tele/Fax (630) 858-6392
E-mail: lelp@xnet.com

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

BRIEF OF *AMICI CURIAE* 1

INTEREST OF *AMICI CURIAE* 1

STATEMENT OF THE CASE 3

SUMMARY OF ARGUMENT 3

ARGUMENT 4

THIS COURT SHOULD AFFIRM THAT THE RULE OF *MIRANDA v. ARIZONA* IS NOT A CONSTITUTIONAL MANDATE AND THAT VOLUNTARINESS IS THE SOLE TEST FOR CONFESSION ADMISSIBILITY 4

A. *AMICI* DO NOT SEEK A REVERSAL OF *MIRANDA v. ARIZONA* 7

B. *AMICI* SUBMIT THAT *MIRANDA* IS NOT A CONSTITUTIONAL MANDATE 8

C. *AMICI* SUBMIT THAT 18 U.S.C. § 3501 AND SIMILAR PROVISIONS AS MAY BE PASSED IN THE FUTURE BY THE STATES ON THIS SUBJECT ARE CONSTITUTIONAL AND APPROPRIATE EX-

CLUSIONARY RULE REFORM, AS WELL AS CARRYING OUT THE ESSENTIAL PURPOSE OF *MIRANDA* OF ENSURING VOLUNTARY CONFESSIONS 9

D. *AMICI* SUBMIT THAT POLICE ADMINISTRATORS AND PROSECUTORS WILL ENCOURAGE THE POLICE TO CONTINUE TO GIVE *MIRANDA* WARNINGS AS AN IMPORTANT INDICIA OF CONFESSION VOLUNTARINESS 12

CONCLUSION 14

TABLE OF AUTHORITIES

Cases **Page**

Bivens v. Six Unknown Agents, 403 U.S. 388 (1971) 8
California Attorneys for Criminal Justice v. Butts, 195 F.3d 1039 (9th Cir. 1999), *reh'g denied en banc* 8
Cooper v. Dupnik, 963 F.2d 1220 (9th Cir. 1992) 8
Harris v. New York, 401 U.S. 222 (1971) 4, 9
Michigan v. Tucker, 417 U.S. 433 (1974) 4, 9
Miranda v. Arizona, 384 U.S. 436 (1966) .... *passim*
New York v. Quarles, 467 U.S. 649 (1984) 3, 9
Oregon v. Elstad, 470 U.S. 298 (1985) 3, 9, 12
Oregon v. Hass, 420 U.S. 714 (1975) 4, 9
Schneckloth v. Bustamonte, 412 U.S. 218 (1973) 13
United States v. Crocker, 510 F.2d 1129 (10th Cir. 1975) 11
United States v. Dickerson, 166 F. 3d 667 (4th Cir. 1999), *reh'g denied en banc* 3, 6
United States v. Nafkha, 1998 U.S. App. LEXIS 1653, 1998 WL 45492 (unpublished opinion 10th Circuit) 11
United States v. Rivas-Lopez, 988 F. Supp. 1424 (D. Utah 1997) 11
United States v. Tapia-Mendoza, 41 F. Supp. 2d 1250 (D. Utah 1999) 11

Constitution

United States Constitution, IV 12
United States Constitution, V ..... *passim*
United States Constitution, VI ..... *passim*
United States Constitution, XIV 4

Statutes

18 U.S.C. § 3501 ..... *passim*
28 U.S.C. § 2680(h) 8
42 U.S.C. § 1983 8

Briefs

AELE *Amici* Brief for Petitioner, *Illinois v. Gates*, 462 U.S. 213 (1983) 11
AELE *Amici* Brief for Neither Party, *Ohio v. Robinette*, 519 U.S. 997 (1996) 12
AELE *Amici* Brief for Petitioner, *United States v. Leon*, 468 U.S. 897 (1984) 11

Article

F. Graham, *The Self-Inflicted Wound* (1970) 7
Supreme Court Will Review Miranda, 33, No. 49 Crime Control Dig. 1 (1999) 7

This brief is filed pursuant to Rule 37 of the United States Supreme Court. Consent to file has been granted by respective Counsel for the Petitioner and Respondent. The letters of consent have been filed with the Clerk of this Court, as required by the Rules.[1]

INTEREST OF *AMICI CURIAE*

Americans for Effective Law Enforcement, Inc. (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties, and property, within the framework of the various state and federal constitutions.

AELE has previously appeared as *amicus curiae* over 100 times in the Supreme Court of the United States and over 35 times in other courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio, and Missouri.

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[1] As required by Rule 37.6 of the United States Supreme Court, the following disclosure is made: This brief was authored for the *amici* by James P. Manak, Esq., counsel of record, and Wayne W. Schmidt, Esq., Executive Director of Americans for Effective Law Enforcement, Inc. No other persons authored this brief. Americans for Effective Law Enforcement, Inc., made the complete monetary contribution to the preparation and submission of this brief, without financial support from any source, directly or indirectly.

The International Association of Chiefs of Police, Inc. (IACP), is the largest organization of police executives and line officers in the world. Founded in 1893, the IACP, with more than 17,000 members in 112 countries, is the world's oldest and largest association of police executives. IACP's mission, throughout the history of the association, has been to identify, address, and provide solutions to urgent law enforcement issues.

The National Sheriffs' Association (NSA), is the largest organization of sheriffs and jail administrators in America, consisting of over 40,000 members. It conducts programs of training, publications, and related educational efforts to raise the standard of professionalism among the nation's sheriffs and jail administrators. While it is interested in the effective administration of justice in America, it strives to achieve this while respecting the rights guaranteed to all under the Constitution.

The Virginia Association of Chiefs of Police (VACP) is a professional membership association representing federal, state, and local law enforcement executives in the state of Virginia. The Association regularly provides certified training and professional conference services for its members.

Amici are national and state professional associations representing the interests of law enforcement agencies at the state and local levels. Our members include: (1) law enforcement officers and law enforcement administrators who are charged with the responsibility of overseeing the process of interrogations; and (2) police legal advisors who, in their criminal jurisdiction

capacity, are called upon to advise law enforcement officers and administrators in connection with such matters, including the formulation and implementation of policy and procedures on the subject.

Because of the relationship with our members, and the composition of our membership and directors–including active law enforcement administrators and counsel–we possess direct knowledge of the impact of the ruling of the court below, and we wish to impart that knowledge to this Court.

STATEMENT OF THE CASE

Amici reference the facts of the case which are recounted in the opinion below, *United States v. Dickerson*, 166 F. 3d 667, 674-77 (4th Cir. 1999), *reh'g denied en banc*.

SUMMARY OF ARGUMENT

This case is *not* about whether *Miranda* warnings should be discontinued.

Amici do *not* seek a reversal of *Miranda v. Arizona*, 384 U.S. 436 (1966). We do, however, submit that the rule in that case is not of constitutional dimension, that it is rather a "prophylactic" rule designed by the Court as an extra-constitutional means of ensuring police compliance with the fifth amendment protection against self-incrimination, as the Court has indicated in its rulings in *Oregon v. Elstad*, 470 U.S. 298 (1985); *New York*

v. Quarles, 467 U.S. 649 (1984); *Oregon v. Hass*, 420 U.S. 714 (1975); *Michigan v. Tucker*, 417 U.S. 433 (1974); *Harris v. New York*, 401 U.S. 222 (1971); and other cases.

We urge the Court to adopt the ruling of the court below that 18 U.S.C. § 3501, and similar provisions as may be enacted into statutory law or court rules by the states in the future, are constitutional and appropriate exercises of legislative and judicial powers. Such provisions carry out the invitation of *Miranda* itself for further experimentation by the states and federal authorities to seek alternative means of protecting defendants' fifth and sixth amendment rights. *Amici* have long encouraged reform of the exclusionary rule, which we submit such legislative effort supports, as well as the broader goal of ensuring voluntary confessions.

We also believe that law enforcement agencies and officers will continue to use the *Miranda* warnings, no matter what the Court's ruling may be in this case. We believe that the warnings of constitutional rights are viewed as accepted practice and procedure and will continue to be critical indicia for suppression hearing courts and trial courts on the issue of voluntariness under the fifth and fourteenth amendments.

ARGUMENT

THIS COURT SHOULD AFFIRM THAT THE RULE OF *MIRANDA v. ARIZONA* IS NOT A CONSTITUTIONAL MANDATE AND THAT VOLUNTARINESS IS THE SOLE TEST FOR CONFESSION

ADMISSIBILITY.

A. *AMICI* DO NOT SEEK A REVERSAL OF *MIRANDA v. ARIZONA*.

B. *AMICI* SUBMIT THAT *MIRANDA* IS NOT A CONSTITUTIONAL MANDATE.

C. *AMICI* SUBMIT THAT 18 U.S.C. § 3501 AND SIMILAR PROVISIONS AS MAY BE PASSED IN THE FUTURE BY THE STATES ON THIS SUBJECT ARE CONSTITUTIONAL AND APPROPRIATE EXCLUSIONARY RULE REFORM, AS WELL AS CARRYING OUT THE ESSENTIAL PURPOSE OF *MIRANDA* OF ENSURING VOLUNTARY CONFESSIONS.

D. *AMICI* SUBMIT THAT POLICE ADMINISTRATORS AND PROSECUTORS WILL ENCOURAGE THE POLICE TO CONTINUE TO GIVE *MIRANDA* WARNINGS AS AN IMPORTANT INDICIA OF CONFESSION VOLUNTARINESS.

Over thirty years ago Congress passed 18 U.S.C. § 3501, ostensibly overruling *Miranda* for the federal courts and federal law enforcement agencies. Section 3501 makes traditional due process voluntariness the sole standard for the admissibility of confessions and incriminating statements in federal courts, the standard that existed prior to the *Miranda* extra-constitutional rule of warnings of fifth and sixth amendment rights.

Section 3501, however, led a very lonely existence after it was passed in 1968. It was ignored by federal prosecutors and federal courts and greeted with hostility by the United States Justice Department over the years, up to the present case.

A panel of the court below ruled 2-1 that a confession which is determined to be voluntary may be admitted as evidence in federal court despite a technical violation of *Miranda* pursuant to § 3501, and the court *en banc* declined reconsideration.

> The court below stated:
> In response to the Supreme Court's decision in *Miranda v. Arizona*, 384 U.S. 436 (1966), the Congress of the United States enacted 18 U.S.C.A. § 3501 (West 1985), with the clear intent of restoring voluntariness as the test for admitting confessions in federal court. Although duly enacted by the United States Congress and signed into law by the President of the United States, the United States Department of Justice has steadfastly refused to enforce the provision. In fact, after initially "taking the Fifth" on the statute's constitutionality, the Department of Justice has now asserted, without explanation, that the provision is unconstitutional. With the issue squarely presented, we hold that Congress, pursuant to its power to establish the rules of evidence and procedure in the federal courts, acted well within its authority in enacting § 3501. As a consequence, § 3501, rather than *Miranda*, governs the admissibility of confessions in federal court. Accordingly, the district court erred in suppressing Dickerson's voluntary confession on the grounds that it was obtained in technical violation of *Miranda*.

Dickerson, 166 F.3d at 671.

Amici note that the *Miranda* decision has been controversial for many, in and outside of law enforcement. As noted by one commentator after the grant of certiorari in this case:

> While law enforcement authorities initially hated the decision, many within and outside the profession, believe that it actually helped to make police more professional. Some have even argued that having the Miranda warnings imposed on the police made them improve their investigative skills. However, opposition to and criticism of the decision has never really gone away.

Supreme Court Will Review Miranda, 33, No. 49 Crime Control Dig. 1 (1999). *See also* F. Graham, *The Self-Inflicted Wound* (1970).

In view of the many divergent views expressed by the several other *amici* in this case, we will not burden the Court with case law development, but state simply the following on behalf of our constituency of law enforcement administrators and officials:

A. *AMICI* DO NOT SEEK A REVERSAL OF *MIRANDA v. ARIZONA*.

We believe that law enforcement officers and officials have well-assimilated the *Miranda* rules into their policies and procedures. The overwhelming majority of officers on the street today have been trained in the post-*Miranda* era. Officers follow that decision and do not concern themselves, for the most part, with the academic and political debate over the warnings'

constitutional or extra-constitutional nature. They leave that for academicians and policy makers.

As policy makers and law enforcement officials, *amici* are primarily concerned with obtaining clear guidance from the Court which they can put into appropriate policy and procedure. They are also concerned with the civil liability ramifications of the Court's decision in this case. Obviously, if the Court rules that *Miranda* is a constitutional mandate, there is the possibility of civil liability exposure for intentional violations under the Federal Tort Claims Act, 28 U.S.C. § 2680(h), *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971) (federal agents), and 42 U.S.C. § 1983 (state and local officers). *See Cooper v. Dupnik*, 963 F.2d 1220 (9th Cir. 1992), and *California Attorneys for Criminal Justice v. Butts*, 195 F.3d 1039 (9th Cir. 1999), *reh'g denied en banc*.

Whatever the ultimate ruling of the Court in this case, however, we respectfully request clear guidance, not only for the law enforcement community, but also for the state legislatures and state supreme courts which may consider the adoption of appropriate statutes and court rules after the decision in this case.

B. *AMICI* SUBMIT THAT *MIRANDA* IS NOT A CONSTITUTIONAL MANDATE.

The brief of professor Paul G. Cassell on the petition for writ of certiorari, and now as appointed counsel for the respondent on the limited issue of § 3501's constitutionality, contains several arguments on the issue of whether *Miranda* is (a) A rule of constitu-

tional law or (b) A "prophylactic" rule of evidence, extra-constitutional in nature and designed to protect fifth and sixth amendment rights. The cases that we have cited above, *Oregon v. Elstad*, 470 U.S. 298 (1985); *New York v. Quarles*, 467 U.S. 649 (1984); *Oregon v. Hass*, 420 U.S. 714 (1975); *Michigan v. Tucker*, 417 U.S. 433 (1974); *Harris v. New York*, 401 U.S. 222 (1971), all lead to one conclusion, *i.e.*, that (b) is the correct answer for this issue. *Amici* will not burden the Court with redundancy of case law development.

C. *AMICI* SUBMIT THAT 18 U.S.C. § 3501 AND SIMILAR PROVISIONS AS MAY BE PASSED IN THE FUTURE BY THE STATES ON THIS SUBJECT ARE CONSTITUTIONAL AND APPROPRIATE EXCLUSIONARY RULE REFORM, AS WELL AS CARRYING OUT THE ESSENTIAL PURPOSE OF *MIRANDA* OF ENSURING VOLUNTARY CONFESSIONS.

Prior to the *Miranda* decision in 1966 when the sweeping exclusionary rule was adopted, there were no statutory provisions similar to § 3501. In adopting what the Court viewed as a necessary "prophylactic" rule, it made clear that it did not wish to "create a constitutional strait jacket which will handicap sound efforts" by the federal and state authorities to construct rules and statutes to ensure compliance with the fifth amendment in custodial interrogation settings. The *Miranda* decision was clearly not intended to be the "last word" on the subject. In encouraging further development for the protection of defendants' rights by the states and federal government by appropriate and innovative procedures, the Court indicated that it wished primarily to "promot[e]

efficient enforcement of our criminal laws." *Miranda*, 384 U.S. at 467.

The Court, in effect, issued an invitation to the states and Congress to be innovative and devise procedures that carried out *Miranda's* mission, and perhaps as well, in a more refined and sophisticated manner than *Miranda's* rather blunt, mechanical regimen.

Section 3501 is Congress's acceptance of that invitation. Obviously, the invitation would not have been placed on the table by this Court in the first place if the Court believed it had constructed a constitutional mandate in *Miranda*, and this view has been borne out by subsequent decisions of the Court noted above.

Section 3501 may also be viewed as an example of exclusionary rule reform. It is a sophisticated, well-thought-out procedural and remedial approach which incorporates *Miranda*-style warning indicia for voluntariness in subsection (b) (3) and (4):

§ 3501. Admissibility of confessions

. . . .

(b) The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the

time of making the confession, (3) *whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him*, (4) *whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel*; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.

The presence or absence of any of the above-mentioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession.

18 U.S.C. § 3501(b) (emphasis added).

This view was adopted by the Tenth Circuit Court of Appeals in *United States v. Crocker*, 510 F.2d 1129, 1137 (10th Cir. 1975) (alternative holding) and more recently by two cases in the Tenth Circuit, *United States v. Rivas-Lopez*, 988 F. Supp. 1424 (D. Utah 1997) and *United States v. Tapia-Mendoza*, 41 F. Supp. 2d 1250 (D. Utah 1999). Two years ago the IACP, AELE, and others filed a friend of the court brief in another § 3501 appeal, but the United States Court of Appeals reversed the district court and found that the confession was lawfully obtained, *United States v. Nafkha*, 1998 U.S. App. LEXIS 1653, 1998 WL 45492 (unpublished opinion, 10th Circuit), and did not reach the issue of § 3501's constitutionality.

The IACP and AELE have been at the forefront of

exclusionary rule reform. *See, e.g.*, our *amici* briefs in *Illinois v. Gates*, 462 U.S. 213 (1983) and *United States v. Leon*, 468 U.S. 897 (1984). Additionally, the IACP has supported exclusionary rule reform in two membership resolutions and in Congressional testimony.

Amici submit that the adoption of state legislative provisions and state supreme court procedural rules similar to § 3501 will further the general movement of this Court and others for exclusionary rule reform in the area of not only fifth amendment and sixth amendment issues, but fourth amendment issues as well. Such efforts will refine the protection of constitutional rights for defendants in place of judicially-devised remedies such as *Miranda*, which the Court noted in *Oregon v. Elstad*, 470 U.S. 298, 306-07 (1985), "sweeps more broadly than the Fifth Amendment itself."

D. *AMICI* SUBMIT THAT POLICE ADMINISTRATORS AND PROSECUTORS WILL ENCOURAGE THE POLICE TO CONTINUE TO GIVE *MIRANDA* WARNINGS AS AN IMPORTANT INDICIA OF CONFESSION VOLUNTARINESS.

As AELE, IACP, and NSA noted in our *amici* brief in *Ohio v. Robinette*, 519 U.S. 997 (1996) (traffic detainee need not be advised that traffic stop is over before police request consent to search), even when warnings of constitutional rights are not constitutionally required, good policy and practice may be to give such warnings. This Court has long recognized the value of warnings in the fourth amendment consent to search context as indicia of voluntariness, even though it has ruled that such warnings are not constitutionally

required. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973).

Our point is simply this: if this Court approves the constitutionality of § 3501 and continues the exclusionary rule reform movement it has already put in place in post-*Miranda* cases, law enforcement officers will undoubtedly be encouraged by police policies and procedures–including prosecutorial policy direction–to continue giving the warnings of fifth and sixth amendment rights. This will especially be true if states adopt legislative and court rule counterparts to § 3501 which make the giving of warnings important indicia of voluntariness, as is likely to be the legislative and court rule approach.

In the end, the refinement of the process of protecting defendants' rights through various procedural devices adopted by the states that was envisioned by *Miranda v. Arizona* will take place and the *Miranda* Court's original goal will be achieved. Post-*Miranda* development by the Court has been, in essence, an evolutionary process. The Court has the opportunity in this case, *by upholding the constitutionality of § 3501*, to take *Miranda's* salutary purpose of ensuring voluntary confessions to a higher level of refinement and development.

CONCLUSION

Amici urge this Court to uphold the constitutionality of 18 U.S.C. § 3501 on the basis of its post-*Miranda* precedents and sound judicial policy.

Respectfully submitted,

Of Counsel:

GENE VOEGTLIN, ESQ.
International Association of Chiefs of Police, Inc.
515 North Washington St.
Alexandria, Virginia 22312

RICHARD WEINTRAUB, ESQ.
National Sheriffs' Association
1450 Duke Street
Alexandria, Virginia 22314

BERNARD J. FARBER, ESQ.
1126 West Wolfram
Chicago, Illinois 60657-4330

DANA SCHRAD, ESQ.
Executive Director
Virginia Association of Chiefs of Police
1606 Santa Rosa Road
Suite 134
Richmond, Virginia 23288

Counsel for Amici Curiae:

WAYNE W. SCHMIDT, ESQ.
Executive Director
Americans for Effective Law Enforcement, Inc.
5519 N. Cumberland Ave.
Suite 1008
Chicago, Illinois 60656
E-mail: AELE@aol.com

JAMES P. MANAK, ESQ.
Counsel of Record
421 Ridgewood Avenue
Suite 100
Glen Ellyn, Illinois 60137
Tele/Fax (630) 858-6392
E-mail: lelp@xnet.com